Docket Nos: 10-0090, 10-0091, 10-0095, 10-0096.
Bench Date: 7/14/10
Deadline: 7/26/10

M E M O R A N D U M

TO: The Commission

FROM: Leslie Haynes, Administrative Law Judge

DATE: July 12, 2010

SUBJECT: North Shore Gas Company and The Peoples Gas Light and Coke Company

Petition pursuant to Section 19-140 of the Public Utilities Act to Submit an On-Bill Financing Program.

Commonwealth Edison Company

Approval of the On-Bill Financing Program pursuant to Section 16-111.7 of the Public Utilities Act.

Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP

Petition for Approval of On-Bill Financing Program.

Northern Illinois Gas Company d/b/a Nicor Gas Company

Application pursuant to Section 9-201 and Section 19-140 of the Illinois Public Utilities Act for consent to and approval of Rider 31, On-Bill Financing Program and related changes to Nicor Gas' tariffs, and approval of the Energy Efficiency On-Bill Financing Program.

The People of the State of Illinois' Applications for Rehearing

RECOMMENDATION: Deny Rehearing in all four dockets.

On June 2, 2010, the Illinois Commerce Commission ("Commission") entered four individual Final Orders in each of these dockets which approved the respective On

Bill Financing ("OBF") programs of North Shore Gas Company/The Peoples Gas Light and Coke Company ("NS/PGL") (Docket 10-0090); Commonwealth Edison Company ("ComEd") (Docket 10-0091); Central Illinois Light Company d/b/a AmerenCILCO, Central Illinois Public Service Company d/b/a AmerenCIPS and Illinois Power Company d/b/a AmerenIP ("Ameren") (Docket 10-0095); and Northern Illinois Light Company ("Nicor") (Docket 10-0096). The Orders were served on June 3, 2010.

On July 6, 2010, the People of the State of Illinois ("AG") filed an Application for Rehearing in each of the four dockets, alleging identical points of error. The deadline for Commission action on these applications is July 26, 2010.

The AG seeks rehearing on four issues: 1) the failure to provide sample contracts between the financial institution ("FI") and program participants; 2) the prudence of the contract between the FI and the utility; 3) just and reasonableness of the utilities' uncollectible riders; and 4) utility recovery of prudent costs. This memo discusses each of these grounds.

Issue 1

The AG's claim revolves around the statutory requirement that a program approved by the Commission must include "sample contracts and agreements necessary to implement the measures and program." 220 ILCS 16-111.7(d)(4) and 220 ILCS 19-140 (d)(4). In each of the four dockets, however, the AG's first and only statement on this issue appears in its Brief on Exceptions ("BOE"). With respect to Dockets 10-0090, 10-0095 and 10-0096, the entirety of the AG's position on this issue was included in an introductory paragraph in its BOE, wherein, the AG merely stated that "the utility: 1) did not include sample contracts and agreements as required under [the statute]." Docket 10-0095 AG BOE at 4. Both the AG's lateness in urging this matter to the prejudice of other parties and its lack of support are reasons enough to deny the AG's application on this issue in these dockets.

Notably, in Docket 10-0091, Staff initially stated that ComEd had not filed the requisite documents, but it took no exception to the Proposed Order's finding that ComEd would file the documents when they were available. On exceptions and after the record was closed, the AG for the first time complained about the lack of sample contracts and agreements. Although the AG actually did provide supporting argument in this docket, it was still untimely. If the AG wanted to pursue its interpretation of the statute, then the only fair thing is to have alerted the utilities and the decision maker that these matters needed to be a part of the record in its Initial Comments.

Ultimately the problem with the AG's position is the failure to recognize, both in its BOE in the ComEd docket and in its applications for rehearing, that the documents that it would have be filed simply do not exist at this point in time. The statute requires that:

> a program approved by the Commission shall also include the following criteria and guidelines for such program: . . ..

> (4) sample contracts and agreements necessary to implement the measures and program.

220 ILCS 16-111.7(d)(4) and 220 ILCS 19-140 (d)(4). In accordance with the law, the utilities have each provided the contracts and agreements that are available. For example, Ameren, which already has an extensive energy efficiency program, provided many sample documents, whereas the other utilities provided different amounts depending what was available. There is simply no requirement in the statute enumerating the exact documents that must be provided prior to Commission approval of the OBF Program. Nor does the law require an impossible task. Until the FI is selected, the sample consumer borrowing agreements that the AG seeks are not in the utilities' possession. The Commission's Orders recognize this reality. As such, the Orders direct the utilities to file the documents when available prior to the initiation of the OBF Program. If an issue arises with the contracts, it can be addressed at that time. Thus, the law is being followed.

Issue 2

The AG's second issue involves the same statutory subsection, i.e., 220 ILCS 16-111.7(d)(4) and 220 ILCS 19-140 (d)(4). Here, however, the AG wants to have the contract between the utility and the FI filed before the OBF program is approved. This request is similarly untimely. It also absurd on its face. The utilities will enter into contracts with the FI after an RFP process that will take several months. After the evaluation of the various FIs is completed and the winning FI is selected, then the utilities and the FI will enter into a contract.

With respect to the prudence of the contract between the utilities and the selected FI, the AG fails to take account of the requirement that the contract the utilities enter into with the FI must be consistent with the Commission's Order. The AG ignores the point that if the contracts result in imprudent costs, the utilities will be denied recovery of those costs in the reconciliation proceeding of the related rider.

Issue 3

The AG's third issue is difficult to coherently summarize and appears to be based on a fundamental misunderstanding of how the OBF statute operates. The AG makes several inaccurate statements in its argument on this issue. First, the AG states that "excess costs will be collected through the uncollectibles rider." Docket 10-0095, AG Application for Rehearing at 4. This is not correct. The OBF costs will be recovered through the utilities' various energy efficiency riders. Second, the AG makes the argument that lenders should pay for the credit check and security interest filing. Docket 10-0095, AG Application for Rehearing at 5. This proposal was never set out during the proceeding and, thus, if the AG is now making such a proposal, it is untimely. The only question put before the Commission was whether ratepayers in general or the program participants themselves should pay these costs. The Order found that these costs should be recovered from ratepayers. Third, the AG states, in error, that the

Commission has delegated "critical cost-containment measures to negotiations between the FIs and the utilities." Docket 10-0095, AG Application for Rehearing at 6. This statement completely ignores the prudence review that will be performed in the annual reconciliation filings for the energy efficiency riders.

The AG apparently does not understand how this program operates. The program costs - which include the cost of credit checks and a security interest filing - are recovered from all eligible ratepayers through the utilities' energy efficiency riders. The prudence of these costs are reviewed in annual reconciliation proceedings. If a program participant defaults on his or her loan for the energy efficiency measure, the unpaid portion of the loan is still paid to the FI by the utility and those costs are recovered from all ratepayers through the utility's uncollectible riders. Credit checks and security filings are included in the statutory scheme in hopes that the much greater cost of a loan default can be avoided.

Given all of the inaccuracies contained in this portion of the rehearing application, it is impossible to find any merit to the AG's arguments and certainly no reason for changing the Order's conclusions.

Issue 4

In this issue, the AG reasserts its request to impose a cap on the utilities' budgets for the OBF programs. The Commission's decision, however, coincides directly with the plain language of the statute. The statute allows the utilities to recover all of their prudently incurred costs. As stated above, those costs will be subject to a prudence review in the annual reconciliation proceedings. As such, the AG brings no new arguments or facts to the discussion and thus rehearing is not warranted.

Recommendation

The AG's first two grounds for rehearing, regarding the filing of sample contracts, should be denied for requesting documents not yet in existence. The third issue should be denied for lack of clarity. The fourth reason offered by the AG for rehearing should be found to lack merit because the Commission has thoroughly considered this issue and there is no new evidence, reason or argument to support a change.

LH:jt